

3

7

8 ELEMCO TESTING COMPANY, INC. V. STATE UNIVERSITY
OF THE STATE OF NEW YORK

9

10 ADJ HEARING ON ORDER TO SHOW CAUSE RE: RELATED
DOCUMENT(S) [2]

11 MOTION FOR PRELIMINARY HEARING [3]

12 ELEMCO TESTING COMPANY INC. AND ELEMCO
INDUSTRIES, INC.

13

16 ADJ FROM 5/20/09

17 ADJ HEARING ON INTERIM APPLICATION FOR
18 COMPENSATION FOR MARGOLIN, WINER & EVENS, LLP
AS ACCOUNTANTS FOR THE DEBTORS; FEES: 32,585.00,
 EXPENSES: 0.00 [124]

19

ADJ FROM 5/20/09

20

21 ADJ HEARING ON INTERIM APPLICATION FOR
22 COMPENSATION FOR RATTET, PASTERNAK & GORDON-
OLIVER, LLP AS ATTORNEYS FOR THE DEBTORS;
FEES: 67,090.00, EXPENSES: 8,695.42 [126]

23 ADJ FROM 5/20/09

24

25

1

2

2

3 ADJ MOTION TO EXTEND EXCLUSIVITY PERIOD FOR
4 FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT [137]

4 ADJ FROM 6/9/09

5

6 ADJ MOTION FOR AUTHORITY TO OBTAIN CREDIT UNDER
7 SECTION 364(b), RULE 4001(c) OR (d) [135]

7

8 ADJ FROM 6/9/09

8

9 ADJ STATUS HEARING

9

10 ADJ FROM 5/20/09

10 ADJ HEARING ON FIRST APPLICATION FOR COMPENSATION
11 FOR PLATZER, SWERGOLD, KARLIN, LEVINE, GOLDBERG
12 & JASLOW, LLP AS COUNSEL FOR THE OFFICIAL
13 COMMITTEE OF UNSECURED CREDITORS; FEES: \$44,083.00,
14 EXPENSES: \$749.29 [121]

13

14 ADJ FROM 5/20/09

14

15 ADJ HEARING ON FIRST APPLICATION FOR COMPENSATION
16 FOR CBIZ ACCOUNTING, TAX & ADVISORY OF NEW YORK,
17 LLC AS ACCOUNTANTS FOR THE OFFICIAL COMMITTEE
18 OF UNSECURED CREDITORS; FEES: \$44,521.20,
19 EXPENSES: \$204.00 [122]

17

18 ADJ FROM 5/20/09

18

19 ADJ MOTION TO USE CASH COLLATERAL ON AN INTERIM
20 BASIS [4]

19

20 ADJ FROM 5/20/09

20

21 BEFORE HONORABLE ALAN S. TRUST

22

23

24

25

2

Attorney for the Debtors:

4

5

6

Attorney for United States
Trustee:

8

9

Attorney for Suffolk County
National Bank:

11

12

13

Attorney for Electrical
Industry Board of Nassau
and Suffolk County:

15

16

17

Attorney Local 25 IBEW:

18

19

20

21

Attorney for State University
of New York at Stony Brook:

23

24

25

RATTET, PASTERNAK & GORDON-
OLIVER, LLP
800 Mamaroneck Avenue
Harrison, New York 10528
BY: JULIE A. CVEK, ESQ.OFFICE OF UNITED STATES TRUSTEE
560 Federal Plaza
Central Islip, New York
BY: ALFRED DIMINO, ESQ.BALFE & HOLLAND, PC
135 Pinelawn Road
Suite 125 North
Melville, New York 11747
BY: KEVIN E. BALFE, ESQ.PAYKIN MAHON ROONEY & KRIEG, LLP
185 Madison Avenue
New York, New York 10016
BY: CHRISTOPHER ROONEY, ESQ.LAW OFFICE OF RICHARD S. BROOK
114 Old Country Road
Suite 250
Mineola, New York 11501
BY: RICHARD S. BROOK, ESQ.
PATRICIA E. PALMERI, ESQ.HON. ANDREW M. CUOMO
OFFICE OF THE ATTORNEY GENERAL
STATE OF NEW YORK
300 Motor Parkway
Hauppauge, New York 11788
BY: SUSAN MEDEIROS CONNOLLY,
ESQ.

2

Attorney for Utica Mutual
Insurance Company:

4

5

6

TORRE, LENTZ, GAMELL, GARY &
RITTMMASTER, LLP
100 Jericho Quadrangle
Suite 309
Jericho, New York 11753
BY: PATRICIA A. WAGER, ESQ.

Attorney for Creditors
Committee:

8

9

10

PLATZER, SWERGOLD, KARLIN,
LEVINE, GOLDBERG & JASLOW, PC
1065 Avenue of the Americas
New York, New York 10018
BY: MITCHELL A. KAPLAN, ESQ.

11

Court Recorder Operator:
12

Court Transcriber:

14

15

16

17

18

19

20

21

22

23

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

25

1 THE CLERK: The Honorable Alan S. Trust presiding.

2 THE COURT: Thank you. Be seated, please.

3 All right. Well, obviously we're running a little
4 behind this morning partly due to the fire drill, so let's
5 take appearance on the numerous Elemco Testing cases and
6 matters. Ms. Cvek.

7 MS. CVEK: Good morning, your Honor. Julie A. Cvek
8 of Rattet Pasternak & Gordon-Oliver for the debtors.

9 MS. CONNOLLY: Susan Medeiros Connolly, Assistant
10 Attorney General on behalf of the State University of New York
11 at Stony Brook.

12 MR. BALFE: Good afternoon, your Honor. Kevin
13 Balfe, Balfe & Holland, attorneys for Suffolk County National
14 Bank.

15 MR. DIMINO: Good afternoon, Judge. Alfred Dimino
16 from the Office of the U.S. Trustee.

17 MR. KAPLAN: Good afternoon, your Honor. Mitchell
18 Kaplan from Platzer, Swergold, counsel for the Creditors
19 Committee.

20 MR. BROOK: Good afternoon, your Honor. Richard
21 Brook for Local 25 IBEW. Excuse my voice.

22 MS. PALMERI: Good afternoon. Patricia E. Palmeri
23 from the Law Office of Richard Brook for Local 25 IBEW.

24 MS. WAGER: Good morning. Patricia Wager of Torre,
25 Lentz, Gamell, Gary & Rittmaster for Utica Mutual Insurance

1 Company, the surety creditor.

2 THE COURT: Could I have your last name again?

3 MS. WAGER: Certainly. Wager, W A G E R.

4 THE COURT: Thank you.

5 MR. ROONEY: Good afternoon, your Honor.

6 Christopher Rooney, Paykin, Mahon, Rooney & Krieg for
7 Electrical Industry Board.

8 THE COURT: All right. What have you all worked
9 out?

10 MS. CVEK: We worked out everything, your Honor,
11 substantially.

12 THE COURT: Very well. If you'll e-mail an order?

13 MS. CVEK: Yes. Your Honor, I ask if we could take
14 Stony Brook first if that's acceptable. Your Honor, we have
15 resolved the adversary proceeding pursuant to the terms of the
16 letter of credit contained in the final debtor in possession
17 financing order.

18 Stony Brook will be issued a letter of credit in the
19 amount of \$50,000 in consideration of the performance bond and
20 requirement under the contract as described in the complaint
21 filed in the adversary proceeding. The letter of creditor
22 shall be terminated upon one of three things; a 363 sale, a
23 performance bond obtained by the debtor, or the termination of
24 the contract by Stony Brook. Should Stony Brook wish to make
25 a claim on the letter of credit, they will make an application

1 to the Court and there will be a hearing.

2 Your Honor, we circulated a settlement stipulation
3 containing the settlement terms, as well as discontinuing the
4 adversary proceeding pursuant to the terms of the settlement
5 stipulation, and we wish to submit that settlement stipulation
6 on notice to your Honor. We were hoping we could submit it on
7 ten days notice to all parties filing notices of appearance in
8 Court today.

9 THE COURT: All right. Let me hear from Stony
10 Brook.

11 MS. CONNOLLY: Your Honor, that is substantially our
12 understanding. I've seen the drafts. We are in agreement.
13 It just is a matter of getting the final drafts and
14 circulating them and submitting them to your Honor.

15 THE COURT: All right. Then would you contemplate
16 at this point that the material terms of the agreement would
17 be set out in a settlement motion and that would be circulated
18 even if it's pending the final documents? I'm concerned about
19 what appears to be an issue of a time delay and --

20 MS. CONNOLLY: I think that would be fine.

21 MS. CVEK: That's acceptable, your Honor, yes.

22 THE COURT: All right. And then given the level of
23 participation in the case, it would seem that most of the
24 active parties and constituents are here today. It's not
25 typically my practice to take oral motions, but in the

1 interest of saving some money, do any party have an objection
2 to shortening the 9019 notice period to ten days?

3 MR. MITCHELL: The committee has no objection, your
4 Honor.

5 MR. BROOK: No objection here, your Honor.

6 MR. BALFE: No objection, your Honor.

7 MR. KAPLAN: No objection, your Honor.

8 MR. DIMINO: The United States Trustee has no
9 objection, Judge.

10 THE COURT: All right. Then what the Court will do
11 then, Ms. Cvek, is I will enter an order shortening the notice
12 time for consideration of the settlement announced on the
13 record to ten days from filing and service. The Court takes
14 settlements by presentment, so you can notice that out by
15 presentment. Again, the presentment period will run ten days
16 after the filing and service of the motion absent objection.

17 After that is percolated then you can submit an order
18 approving. If there's an objection filed, then I assume by
19 the end of today's calendar there may be another hearing date
20 set, so we'll talk about hearing on objections at the end of
21 the calendar, but I think we want to let Ms. Connolly go.

22 Do you all currently have another date for hearing
23 with us?

24 MS. CVEK: We do not, your Honor. I was going to be
25 asking for an adjournment. After today's hearing I anticipate

1 the only thing to be carried to the next hearing will be a
2 case conference and possibly exclusivity, and I was asking --
3 I was hoping to have an adjournment through August.

4 THE COURT: Let's go ahead and find that date now so
5 that we can --

6 (Pause in proceedings)

7 THE COURT: All right. Our August date right now is
8 August 12th. That would be at 11:00 o'clock. If there is an
9 objection filed to the settlement with Stony Brook, then we
10 will try to find time in July to work you in for an expedited
11 hearing on that because that has been at the fulcrum a lot of
12 the case issues. So rather than assign you a hearing date and
13 time in July that we don't have right now, let's see if any
14 objection comes in, and we'll work from there, but August 12th
15 at 11:00 o'clock for right now would be our next hearings in
16 the Elemco cases.

17 So with that said, Ms. Connolly, you can go if you
18 want. You can stay if you want, but I think for now we're
19 done with you.

20 MS. CONNOLLY: Thank you very much, your Honor.

21 THE COURT: All right. Thank you all, and thank you
22 for getting that worked out.

23 Ms. Cvek, I do again -- I do need for you to e-mail
24 an order shortening time.

25 MS. CVEK: Of course, your Honor.

1 THE COURT: Also, let me just, because we do also
2 run into this, are you also asking to limit notice or just to
3 shorten time?

4 MS. CVEK: Excuse me, your Honor?

5 THE COURT: Are you also asking to limit notice or
6 are you just asking to shorten time?

7 MS. CVEK: That will be to limit notice to the
8 notices of appearance only as opposed to all creditors, your
9 Honor.

10 THE COURT: It would seem appropriate to the Court
11 to limit notice of the settlement to all parties who have
12 filed notices of appearance, as well as the parties who are
13 present in the courtroom today. This is a -- again, a full
14 and active varying constituencies in the case, so also with
15 committee being present and represented, the Court is
16 comfortable to limit notice again to the parties participating
17 in today's hearing, as well as all parties who have filed
18 notices of appearance in the case, and of course, including
19 the United States Trustee.

20 So if you will e-mail an order shortening and
21 limiting notice, we will process that for you.

22 MS. CVEK: Thank you very much, your Honor.

23 THE COURT: All right. Thank you.

24 MS. CVEK: If we can proceed to the debtor's
25 application for debtor in possession financing, which is

1 before your Honor on a final basis today?

2 Your Honor, a final order was circulated.

3 Objections were filed by Local 25 and Electrical Industry
4 Board. After having conversations with their counsel, I
5 believe all the objections have been resolved. A revised
6 final order was drafted and circulated to all parties, and I
7 believe all objections have been resolved in accordance with
8 the final -- with the revised final debtor in possession
9 borrowing order.

10 A copy of that order has been provided to your
11 chambers yesterday via e-mail with a redlined version to the
12 interim order. The final debtor in possession borrowing
13 order, the terms of it would provide a \$200,000 loan to the
14 debtor broken down as follows: There would be a \$50,000
15 capital infusion to the debtor for its operations, a \$50,000
16 cash infusion which would be used to pay professional fees, a
17 \$50,000 letter of credit for the benefit of Local 25 and IEB
18 in lieu of the bonds and requirements under the collective
19 bargaining agreement which shall terminate either upon a 363
20 sale, the issuance of a union bond, or December 31st of 2009.

21 In order for Local 25 or IEB to make a claim on the
22 letter of credit they would have to make an application to
23 this Court. Your Honor, there was language in there that
24 limited Local 25 and IEB's ability to pull the men from the
25 job -- the debtor's job sites in the event a 72-hour notice

1 went uncured.

2 After conversations with Local 25 and IEB, that
3 language has been removed so that the Local 25 and IEB's
4 rights are not impaired under this collective bargaining
5 agreement by virtue of this order, so that in the event an
6 uncured 72-hour notice -- a 72-hour notice is issued and
7 remains uncured, Local 25 and IEB can pull the men.

8 Your Honor, in addition, within two days of issuance
9 of letter of credit, that will be provided to counsel to IEB
10 for them to hold in the event that they need to make an
11 application to the Court, and the fourth term of that
12 \$200,000, as I described to your Honor, it would be a 50,000
13 letter of credit to the benefit of SUNY Stony Brook in lieu of
14 a performance bond, which once again, will terminate either
15 upon a 363 sale, the obtaining of a performance bond, or the
16 termination of the contract, and once again, for SUNY Stony
17 Brook to make an application on that letter of credit they
18 must come to your Honor for authorization.

19 Your Honor, the 200,000 being borrowed by the debtor
20 is subject to Section 364(c)(1) of the Bankruptcy Code, and
21 has several carve-outs. There's a carve-out for validly
22 existing and unavoidable pre-petition chattel with respect to
23 the pre-petition personal property, mechanic's liens, Utica's
24 3(a) claims, trustee's fees, avoidance actions under Chapter 5
25 of the Bankruptcy Code, professional fees that are allowed and

1 awarded by this Court, and those fees of a hypothetical
2 Chapter 7 trustee.

3 Your Honor, the interim final cash collateral order
4 provided for notice of this hearing. Notice was properly
5 served on June 16th, and an affidavit of service was filed
6 with this Court. All objections being resolved, I
7 respectfully request that this Court enter the final debtor in
8 possession financing order.

9 THE COURT: Let me make sure I have the dollars
10 correct. There is a \$200,000 loan from Suffolk County
11 National Bank, and in addition to that there's a \$50,000
12 capital infusion from the debtor, from the debtor's principal?

13 MS. CVEK: No. I'm sorry, your Honor. The \$200,000
14 is broken down into four parts. The first 50,000 of that
15 200,000 will be used for working capital for the debtor. It's
16 earmarked for working capital. The second \$50,000 will be
17 provided by Suffolk County National Bank to the debtor is
18 going to be earmarked for payment on professional fees, and
19 then the remaining \$100,000 of the 200 will be broken down
20 into \$50,000 letter of credits -- letters of credit.

21 THE COURT: All right. Then let me ask if there's
22 any party present -- let me, before I do that, the order that
23 has been submitted now to the Court, that has also been
24 circulated to all the parties present?

25 MS. CVEK: Yes, your Honor.

1 THE COURT: All right. Let me ask then if there's
2 any party that disagrees with the recitation now on the record
3 for the providing and final authorization of the DIP facility.
4 I see a chorus of heads shaking horizontally.

5 MR. BROOK: Your Honor, on behalf of Local 25, which
6 had some very serious objections in the past, our objections
7 have been overcome and resolved. So there's no objection from
8 Local 25 to the final order as most recently presented to your
9 Honor.

10 THE COURT: Thank you, Mr. Brook.

11 Ms. Wager.

12 MR. WAGER: Utica has no objection at all. Our
13 objections were handled in the interim order, and we're fine
14 with the final order.

15 THE COURT: All right. And Ms. Palmeri, you and Mr.
16 Brook are on the same team?

17 MR. BROOK: Yes, your Honor.

18 MS. PALMERI: Yes, your Honor.

19 THE COURT: All right. Mr. Rooney.

20 MR. ROONEY: As respects the final order as
21 submitted to the Court resolves our objection, we agree as
22 well.

23 THE COURT: Mr. Kaplan.

24 MR. KAPLAN: The committee has no objection to the
25 final form of the order, your Honor.

1 THE COURT: And then Mr. Balfie.

2 MR. BALFE: No objection.

3 THE COURT: Mr. Dimino.

4 MR. DIMINO: Judge, the United States has no
5 objection to the form of the final order or the contents
6 thereof.

7 THE COURT: All right. Is there a -- is there a
8 provision within the order or is there otherwise an agreement
9 among the professionals on how to allocate the allocated
10 \$50,000?

11 MS. CVEK: Yes, your Honor. I have actually
12 circulated an order to the Office of the U.S. Trustee and all
13 professionals, as well as Suffolk County Bank that provides
14 for partial payment of the allowed interim professional fees
15 that I will submit to your Honor, and I was going to go
16 through that as well at today's hearing.

17 THE COURT: All right. Then based on the agreement
18 of --

19 MS. CVEK: Your Honor, if I can interrupt one other
20 thing? I did want to clarify on the record that Suffolk
21 County's lien for this post-petition financing is subject to
22 the property of all three debtors. The pre-petition secured
23 lien was only against Elemco Testing. This lien is now
24 against all three debtors, Elemco Testing, Elemco
25 Construction, and Elemco Industries.

1 THE COURT: But the DIP motion was fully served in
2 all three cases?

3 MS. CVEK: Yes, it was, your Honor.

4 THE COURT: All right. Then based upon the
5 agreement and the lack of objection, which has not been
6 resolved by agreement, the Court will approve the debtor in
7 possession financing. We will look over and process the form
8 of order, and if there's anything in there that bothers the
9 Court, then we'll work through that, but based upon the
10 agreement as announced, there's no lien against avoidance
11 actions being granted under the motion, so that's one of the
12 big red flags for the Court. So as stated on the record, the
13 Court will approve the agreement and then we will process the
14 order as quickly as we can.

15 MS. CVEK: Thank you very much, your Honor. I
16 believe, if I may proceed to the next matter on the calendar?
17 We also have a final cash collateral which was carried
18 through today, your Honor.

19 After consulting with counsel to the committee and
20 counsel to Suffolk National Bank, as well as Utica, we believe
21 that we are ready to proceed on final cash collateral subject
22 to substantially the same terms of the interim cash collateral
23 order, the amendment to the interim cash collateral order, and
24 all the extension stipulations, and as well as the budget
25 which was annexed as an exhibit to the debtor's DIP financing

1 motion and any other subsequent budgets to be provided by the
2 debtor to counsel for Suffolk County National Bank and/or the
3 committee.

4 Your Honor, we will be circulating a final cash
5 collateral stipulation order and then submitting it once all -
6 - once language is all agreed to to your Honor.

7 THE COURT: And there I take it that there will be n
8 material variance between the interim order, which has thus
9 far been entered, and the DIP order that's about to be entered
10 that the final cash collateral order will in effect reconcile
11 the two orders?

12 MS. CVEK: Yes, your Honor. The final cash
13 collateral order will include essentially the same language as
14 the interim order plus the amendments to that interim order
15 which merely carves out the Utica's 3(a) liens.

16 THE COURT: All right. And that order will be
17 drafted and circulated following the hearing?

18 MS. CVEK: Yes, your Honor.

19 THE COURT: All right. Then I'm assuming at this
20 point that given the announcement on the final cash collateral
21 and given the agreement worked out on the DIP lien, that
22 there's no objection to the Court making the interim cash
23 collateral order final so long as the final order is
24 reconciled to the DIP order?

25 Let's start with Mr. Kaplan.

1 MR. KAPLAN: That's correct, your Honor. Obviously
2 subject to our review of the final order, but as long as it's
3 substantially the same as the interim, it shouldn't be
4 problematic.

5 THE COURT: All right. Then let me just ask any
6 party present who opposes entry of a final cash collateral
7 order to go ahead and state that objection.

8 All right. Then the Court will grant final approval
9 to the use of cash collateral. Again, the order will be
10 circulated among the parties and submitted with approval as to
11 form of all parties present. If there's any objection to the
12 final form of the order, then I'll have -- I'll direct that
13 Ms. Cvek upload what the debtor believes to be the final form
14 of order, circulate that to the parties, and we'll have a 72-
15 hour window for any party to object to the form of order once
16 submitted to the Court, but that again is only in the event
17 that there's not agreement after there's been a reasonable
18 window of time for the parties to work through the final
19 language.

20 MS. CVEK: Thank you very much, your Honor.

21 I believe the next matter that was carried to
22 today's hearing was the debtor's authorization to make payment
23 on the interim allowed professional fees.

24 Your Honor, now that the debtor has approval of
25 \$50,000 to be earmarked towards payment of professional fees,

1 the debtor respectfully requests that it use that \$50,000
2 towards payment of the allowed professional fees. Your Honor,
3 I have drafted an order and circulated it to all
4 professionals, counsel to the committee, counsel for Suffolk
5 County National Bank, and the Office of the U.S. Trustee for
6 their review and approval, and I believe that we have an
7 agreed form of order which provides for full payment on the
8 allowed expenses, and then after a 29 percent payment on the
9 net allowed fees after the holdbacks and after application of
10 any pre-petition retainers, so that the Rattet Pasternak and
11 Gordon-Oliver firm has an allowed fee of \$55,000 after giving
12 credit for the \$17,608.80 of pre-petition retainer, they'll
13 receive a 29 percent payment on their fees of \$10,843.45, and
14 will receive 100 percent payment on our allowed expenses of
15 \$8,695.42.

16 With respect to the debtor's accountants, Margolin
17 Winer & Evens, LLP, they have an allowed fees after holdback
18 of \$26,000. Since they did not have a pre-petition retainer,
19 their 29 percent payment would total \$7,540, and they would
20 not be receiving any payments on expenses since they do not
21 have any allowed expenses.

22 With respect to Jason Samuels, PC, special counsel
23 for the debtors, they have an allowed fee of \$10,000, which
24 after netting out the pre-petition retainer of \$10,000, they
25 will not receive any payment on their fees, but they will get

1 a payment on their allowed expenses of \$36.25.

2 With respect to counsel to the committee, Platzer,
3 Swergold, Karlin, Levine, Goldberg & Jaslow, LLP, they have an
4 allowed fee after holdback of \$37,000. After their 29 percent
5 payment, they will receive \$10,730, and they will receive a
6 payment of \$749.29 of their allowed expenses, and finally,
7 financial advisors and accountants to the committee, CBIZ
8 Accounting Tax and Advisory of New York, LLC, have an allowed
9 fees after holdback of \$37,000. They also will get a fee
10 payment of \$10,730, and payment on their expenses of \$204.

11 THE COURT: All right. Let me then ask first, Mr.
12 Dimino, I ask if your office has any objection to that
13 arrangement as outlined on the record.

14 MR. DIMINO: Judge, the United States Trustee has no
15 objection to that arrangement, and I saw the form of order and
16 I have no objection to that.

17 The only question I do have is clarification is that
18 the \$50,000 that's coming in, is it sufficient to pay the full
19 amount of the allowed interim fees? So I'm interested in
20 understanding if there is an agreement with the debtor as to
21 payment of the balance of those fees, and if so, what is the
22 agreement or what is the anticipation of the parties?

23 MS. CVEK: Your Honor, the debtors' DIP budget which
24 -- the budget that was annexed to debtor's DIP application --
25 financing application that will be annexed to the debtor's

1 final cash collateral order provides for \$2,000 budgeted
2 payments towards professional fees, however, at this point our
3 firm will not be seeking payment on that unless the debtor is
4 -- has the financial wherewithal to pay that. We don't want
5 to put the debtor in a position where they have to choose
6 whether they pay a critical vendor or fringe benefits to the
7 union or our fees.

8 At this point there's an understanding that this
9 payment we're taking right now is all we're going to be
10 seeking from the debtor.

11 With respect to the committee and their anticipated
12 -- if they anticipate to try to collect anything from the
13 debtor, I'll let Mr. Kaplan speak to that, but at this point I
14 don't -- my proposed order does not bind the debtor to making
15 any further payments other than as set forth in the order and
16 that budget. The order allows them if they have the financial
17 wherewithal, but does not actually bind the debtor to make
18 those payments. We don't want to put them in that position
19 that creates a conflict amongst the administrative creditors.

20 THE COURT: It would seem, and I'll come to you
21 next, Mr. Kaplan, it would seem thought that perhaps the
22 cleanest course to now proceed on is to simply have the order
23 provide that no further payments will be made on the allowed
24 interim fees without further order of the Court. For the
25 debtor to take \$2,000 sporadically and try to divide it up

1 into \$400 here and \$400 there may frankly be more effort than
2 simply waiting for another 60 days and see how the case
3 progresses, but let me ask Mr. Kaplan.

4 As outlined by Ms. Cvek, and I realize there's an
5 order out there circulating to this effect, but is the
6 agreement as outlined consistent with your understanding?

7 MR. KAPLAN: It is, your Honor. We believe that the
8 proposed order represents a fair compromise between allowing
9 the professionals some payment for their services from a case
10 that's been going on since December of 2008, but at the same
11 time allowing the debtor some breathing room with their new
12 financing, and not overburdening them with additional
13 payments.

14 With respect to any further payments on the allowed
15 fees, the budget as proposed by the debtor does provide for
16 \$2,000 per week in professional fees, and in theory one would
17 like to think that that will be set aside by the debtor, but
18 in terms of forcing them to do it, we're not willing to burden
19 -- we're not -- we don't want to burden the debtor with
20 forcing them to do it at this point, and we would just say
21 that the proposed order is without prejudice to the
22 committee's rights or the rights of any professionals to seek
23 further payment on the fees that have been allowed to date.

24 THE COURT: All right. Very well. Then is there
25 any party present otherwise that has an objection to this

1 allocation of the \$50,000 that's coming in through the DIP
2 loan?

3 All right. Then what I'll do is I will look for the
4 order to be submitted. It sounds again to the Court that the
5 best way to proceed is if the debtor is able to set money
6 aside as it operates that we should address at a later hearing
7 whether or not there is at that time money available to
8 circulate among the professionals, and certainly that is
9 without prejudice to any professional to come in and seek
10 other relief, but for current purposes, the Court will approve
11 the allocation as outlined, and will look for the order if
12 it's already been submitted.

13 If it's not yet been submitted, if you would simply
14 iterate it to provide that further payment is subject to
15 further order of the Court.

16 MS. CVEK: Your Honor, I will revise the order
17 accordingly, circulate it to parties, and then submit it to
18 your chambers.

19 THE COURT: All right. And let me also let the
20 professionals know that that is -- further payment is
21 something that the Court would be willing to consider at the
22 August 12 hearing. We'll have a better sense of where the
23 debtor is at the August 12 adjourned status -- general case
24 status conference.

25 So if you reach some other agreement in the interim

1 for further payment, simply bring that to the Court's
2 attention. If there's some other agreement worked out, Ms.
3 Cvek, if you would file a letter with the Court by August 7th,
4 then we'll be able to pick that up and I'll review it in
5 preparation for the August 12 hearing.

6 MS. CVEK: Very good, your Honor.

7 Your Honor, I believe there is one last matter on
8 your calendar, the debtor's motion for exclusivity.

9 At the last hearing your Honor extended the debtor's
10 exclusive periods through -- well, the time to file a plan
11 through July 16th, and your Honor said that you would hear the
12 motion once again on today's hearing for further extension.

13 At this point, your Honor, we have resolved debtor
14 in possession financing, final cash collateral, the debtor's
15 adversary proceeding with SUNY Stony Brook. I believe things
16 have calmed down. The relation has calmed down between the
17 debtor and Local 25. At this point the debtor is continuing
18 in its efforts to try to solicit a bid from the potential
19 purchaser it's been in contact with. It has not received a
20 bid yet.

21 With that being said, the debtor's contemplating
22 retaining a business broker to market the debtor's assets to
23 either obtain a stalking horse or proceed to setting up an
24 auction so that we could bring any potential purchasers to the
25 table as opposed to sitting back and waiting for a potential

1 purchaser to make an offer.

2 With that being said, the debtor respectfully
3 submits that cause exists to extend the debtor's exclusive
4 period for filing a plan through the -- through August. Your
5 Honor, I would respectfully request that it would be through
6 the August 12th hearing date.

7 THE COURT: All right. And that would be -- the
8 request is to extend the exclusive period for the filing of a
9 plan and disclosure statement to August 12th?

10 MS. CVEK: Yes, your Honor.

11 THE COURT: And then is there a contemplated date or
12 a deadline to seek to solicit acceptances of that plan?

13 MS. CVEK: Your Honor, after reviewing the order
14 from last hearing, I think that period was actually extended
15 through September. I think when I submitted the order to
16 chambers, as an oversight I didn't change that date, so that
17 the exclusive period for soliciting votes is actually still
18 through September. So I believe that that date is still
19 proper. So I'll keep that date in the order as well.

20 THE COURT: Is that September 30th?

21 MS. CVEK: Your Honor, I'm not positive of the date.
22 I seem to think it was September 16th, but I'm not positive.

23 MR. DIMINO: Judge, I believe it's September 14th,
24 according to the calendar.

25 THE COURT: All right. September 14th is going to

1 be cutting it close, so let me ask if any party present has an
2 objection to extending the debtor's exclusive period to file a
3 plan and disclosure statement to August the 12th and extending
4 the solicitation period to September 30th?

5 MR. KAPLAN: The committee has no objection, your
6 Honor. Just as a suggestion that may be instead of the August
7 12th, that we extend it to August 15th just as a precaution.

8 THE COURT: Any other party present wish to be heard
9 on exclusivity?

10 All right. Then the Court will extend the exclusive
11 period to file a plan to August the 15th, and the solicitation
12 of votes to September the 30th. I will ask that following the
13 hearing, Ms. Cvek, if you would get with Mr. Balfe -- in the
14 first instance Mr. Balfe, Mr. Kaplan, and the U.S. Trustee's
15 Office to talk about a date by which even if the debtor
16 doesn't file a plan and disclosure statement, it does file at
17 least an outline of the plan.

18 There's been plenty of activity for the debtor
19 inside and outside the courthouse since the filing of the
20 case. This may not be the appropriate time to burden the
21 debtor with the filing of an outline, but certainly by the
22 middle of August with this breathing space that now hopefully
23 the debtor will have to focus only on the business, the debtor
24 should be able to report to us by August 12th, if it has not
25 yet filed a plan, when it will file an outline, at least a

1 business outline of what a plan would look like.

2 So if you would visit with that issue with the
3 bank's counsel, including counsel for the U.S. Trustee so that
4 when you all come back on August 12th if there's not a plan on
5 file, at least we know when an outline of the plan will be
6 filed.

7 MS. CVEK: Okay, your Honor.

8 THE COURT: All right. Then anything else on the
9 calendar for today on the various Elemco cases?

10 MS. CVEK: I don't believe so.

11 THE COURT: All right. Then the Court appreciates
12 you all getting these matters worked out. We will look for
13 the settlement motion with Stony Brook. We will look for the
14 cash collateral final order, and we will look for the other,
15 the DIP order and the professionals' order, and we will
16 process those all as quickly as we can.

17 With respect to settlement, we'll wait until that's
18 noticed out, but we will process the order shortening and
19 limiting notice when submitted, and then we will see you all
20 back on August the 12th at 11:00 o'clock? 11:00 o'clock.

21 MS. CVEK: Thank you very much, your Honor.

22 THE COURT: You will also, Ms. Cvek, file a letter
23 online giving notice to all the parties of the adjourned
24 hearing date and time, again August 12th at 11:00.

25 All right. Thank you all.

1 MS. CVEK: Thank you very much, Judge.

2 THE COURT: All right. We'll be adjourned on the
3 various Elemco matters. We'll go off the record. I'm going
4 to stay out and finish my notes. You all may pack up.

5 MS. CVEK: Thank you very much, Judge.

6 THE COURT: Thank you.

7

8 * * *

9

10 **CERTIFICATION**

11

12 I, Catherine Aldrich, certify that the foregoing is a correct
13 transcript from the electronic sound recordings of the
14 proceedings in the above-entitled matter.

15

16

Catherine Aldrich

July 1, 2009

17

Catherine Aldrich